

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

-----	X	
	:	
Ai Ming Ni,	:	
Plaintiff,	:	
	:	08 Civ. 00385 (LBS) (KNF)
- against -	:	AFFIRMATION IN OPPOSITION
	:	TO MOTION
MICHAEL B. MUKASEY,	:	
Attorney General of the United States, et. al.,	:	
Defendants.	:	
-----	X	

I, Yee Ling Poon, Esq., affirm under penalty of perjury that :

1. I, Yee Ling Poon, Esq., represent the plaintiff in the above entitled action, and respectfully submit this affirmation in opposition to the motion dated April 24, 2008 made by David Bober on behalf of Defendants asking that the Court order the dismissal of Plaintiff's complaint dated January 15, 2008.
2. I have personal knowledge of facts which bear on this motion because I am the attorney representing Plaintiff Ni in his immigration proceedings.
3. The motion should be denied because it is legally erroneous as removing the final grant is a ministerial duty of the government, not an adjudicatory function. The court has jurisdiction to consider Plaintiff's Mandamus Action pursuant to the Administrative Procedural Act ("APA") and the Mandamus Act. In asylum cases, background checks are ministerial and nondiscretionary; the APA requires that the checks are conducted within a reasonable time frame. A period of over three years, as in Plaintiff's case, cannot be considered reasonable particularly as Plaintiff had already passed a previous background check at the time of his grant of conditional asylum in 2004.

See further detailed arguments in the attached Memorandum Response to Defendant's

Motion to Dismiss.

4. In view of the foregoing, it is respectfully submitted that the motion should be denied.

I declare under penalty of perjury that the foregoing is true and correct.

Yee Ling Poon, Esq.
Law Office of Yee Ling Poon, PLLC
11 East Broadway, 5th Floor
New York, NY 10038
t [212] 385-4575
f [212] 385-4792

Dated: July 28, 2008
New York, NY